into effect and changed the law, giving the heirs themselves the right to bring action for the possession of the land.[9] The analogy to a trusteeship was thereby greatly weakened, but the old rule has, nevertheless, been followed by cases since the code went into effect.[10]

The administrator, under the California system, has no title. If he did have title, he could be said to be a trustee. All that he holds is present possession and a lien for the payment of debts of the deceased and for the purposes of administration. He is not entitled to the legal estate, which vests in the heirs immediately on the death of the ancestor.[11] The administrator is, therefore, trustee of no legal or equitable estate, and it would seem that the California theory that he is a trustee, though justly defensible before the code, now lacks any foundation. The running of the Statute against the administrator should not, therefore, constitute a bar to the holder of the legal estate who is under disability of infancy. This view, expressed in the principal case as well as in cases in other jurisdictions,[12] is more in keeping with legal theory and is more in accord with the spirit of the Statute of Limitations.

E. W. D.

CRIMINAL LAW:FALSE PRETENCE: MISCARRIAGE OF JUSTICE.—The paramount importance of the preservation of an orderly legal procedure will sometimes require a new trial for a guilty person. Every defendant is entitled, for example, to be personally present at his trial, and to have a jury pass upon the evidence. What is the irreducible minimum of this orderly procedure? *People v. Griesheimer*[1] is the most important case in answer to this question. The defendant was charge with the crime of obtaining money under false pretenses. The information set out that the defendant represented that he was employed by the Fatherland Magazine to collect subscriptions and loans, that certain German-American citizens had contributed specified sums. These representations, it was stated, were false in whole or in part; were known to be false by the defendant; were made to

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[9] Cal. Code Civ. Proc., § 1452; cf. Probate Act 1851, § 114.

[10] Dennis v. Bint, supra, n. 5; Webb v. Winter, supra, n. 5.

[11] Cal. Civ. Code, § 1384; Beckett v. Selover (1857), 7 Cal. 215; Brenham v. Story (1870), 39 Cal. 179; Murphy v. Crouse (1901), 135 Cal. 14, 66 Pac. 971; Price v. Ward (1899), 25 Nev. 203, 58 Pac. 849, 46 L. R. A. 459; Gossage v. Crown Point Co. (1879), 14 Nev. 153; Campau v. Campau (1869), 19 Mich. 116.

[12] Lacy v. Williams (1852), 8 Tex. 182; Hanks v. Crosby (1885), 64 Tex. 483; Belt v. Cetti (1906), 100 Tex. 92, 93 S. W. 1000; Melton v. Beasley (1909), 56 Tex. Civ. App. 537, 121 S. W. 574; Martin v. Conner (1914), 115 Ark. 359, 171 S. W. 125; Kulbeth v. Drew Co. (1916), 125 Ark. 291, 188 S. W. 810.

[1] (September 4, 1917), 54 Cal. Dec. 246.

one Karl Muck, the prosecutor, to induce him to contribute, and, induced thereby, Dr. Muck delivered $300.00 to the defendant. The indictment does not state the reason why Dr. Muck delivered the $300,00, but the evidence shows that it was to help the German cause and because famous German-American citizens had contributed. The "inducing cause" for the delivery of the money in the crime of false pretenses is not an invariable requirement. It may be omitted where the result follows naturally from the false pretenses.[2] Where false pretenses have resulted in the prosecutor's and defendant's entering into some kind of contract whereby the property is fraudulently obtained, it is usually required that the contract be stated. These are the cases relied upon by the minority, although the reason for prolonging the agony of a dissenting opinion by such copious statements from the cases is not apparent. In the principal case the inducing cause was a motive existing in the mind of the prosecutor, and the general statement that the prosecutor was induced by the false pretenses to make a subscription might well be held to constitute a sufficient statement. Furthermore, the inducing cause has been dispensed with as an essential in many cases, especially where the evidence supplies the defective allegation. Note the sensible treatment of a more informal indictment in Hamilton v. The Queen,[3] where the court said: "As to the second objection: we can easily conceive how a belief that the defendant was a captain in the Army might lead the other party to give the security; but it is a matter to be shown in evidence."[4]

It is significant, however, that the majority opinion does not attempt to decide the case by citing the common law precedents sustaining its position and distinguishing those opposed. A quotation will show the principle on which the dissenting opinion is based: "The prevailing opinion declares that 'no person of common understanding could fail to understand that it was charged by necessary inference at least', etc. Here, then, is the startling announcement that the sufficiency of an information is no more to be tested by the long established and vitally important rules governing the laying of criminal complaints, but is to be determined by what this court may think a man of 'common

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[2] 19 Cyc. 430.

[3] (1846), 9 Q. B. 271, 115 Eng. Rep. R. 1277.

[4] Meek v. State (1898), 117 Ala. 116, 23 So. 155; State v. Penley (1858), 27 Conn. 587; People v. Sattlekau (1907), 120 App. Div. 42, 104 N. Y. Supp. 805; People v. Baker (1910), 137 App. Div. 134, 122 N. Y. Supp. 516. The note to 27 L. R. A. (N. S.) 363 gives the leading cases both ways. The distinctions are usually of the tweedle-dee, tweedle-dum order. The pleading was held sufficient in People v. Hines (1907), 5 Cal. App. 122, 89 Pac. 858; People v. Emmons (1910), 13 Cal. App. 487, 110 Pac. 151; People v. Eddards (1914), 25 Cal. App. 660, 145 Pac. 173; People v. Haas (1915), 28 Cal. App. 182, 151 Pac. 672. Insufficient: People v. Canfield (1915), 28 Cal. App. 792, 154 Pac. 33.

understanding', indulging in inferences might conclude that it meant. Heretofore I have held the belief that the code meant that the language of an indictment should be such that the ordinary man would understand the language and know what it meant, but that the sufficiency of that language to charge a crime did not rest on what the ordinary man understood it to mean, but always on whether the reasonable meaning of the things said was adequate under the rules of criminal pleading. This belief must now be discarded."

To this it may be said that orderly procedure does not require an indictment measuring up to the common law rules of criminal pleading. The majority opinion has rescued the State of California from the danger of having fastened upon it once again (to use the words of Mr. Justice Holmes) the "inability of the seventeenth century common law to understand or accept a pleading that did not exclude every misinterpretation capable of occurring to intelligence fired with a desire to pervert."[5] Orderly procedure is satisfied if the indictment gives the nature and cause of the accusation in terms intelligible to the defendant as a man of common understanding; it need not satisfy the formal rules known only to lawyers unless it is desired with Lord Ellenborough to preserve technicalities for the benefit of the lawyers. "A lawyer who is well stored with these rules would be no better than any other man that is without them, if by force of mere speculative reasoning it might be shown that the application of such and such a rule would be productive of such and such an inconvenience, and therefore ought not to prevail."[6] It is true that "formalism is the twin-born sister of liberty", that for uncivilized people it is better in the interests of justice and equality to decide guilt or innocence by an ordeal or by chance or by fettering the judge with the chains of technical procedure rather than to leave the matter to uncontrolled discretion. When defendants were condemned unheard, it was of the utmost importance that there be a formal arraignment wherein the defendant might have the charge against him read and be given an opportunity to plead, but under modern conditions where indictments are of record, the formal arraignment has become a survival which may be dispensed with where there has been no prejudice.[7] When offenses were not defined by statute, but were being created by the judges, a minute statement of the facts constituting an offense was essential. But a civilized people should be masters, not slaves, of their procedure; should be able to distinguish between historical formalism and

[5] Paraiso v. U. S. (1907), 207 U. S. 368, 52 L. Ed. 249, 28 Sup. Ct. Rep. 127.

[6] The King v. Harringworth (1815), 4 M. & S. 350, 105 Eng. Rep. R. 863.

[7] People v. Tomsky (1912), 20 Cal. App. 672, 130 Pac. 184, 1 California Law Review, 271.

living substance, able to interpret in the light of the "concrete instance rather than the abstract perfection," a thing, of course, which cannot be reduced to mathematical formula. Each case must be decided on its own facts. The majority of the court in the principal case very properly refused to decide questions not judicially presented before them. From a reading of the opinions it is impossible to resist the conviction that the defendant knew from the information exactly with what he was charged, that he received a trial in which all the essentials of orderly procedure were present, that any technical defect in the information could not have worked prejudice, and that there was sufficient evidence to sustain the verdict.

A. M. K.

EMINENT DOMAIN: TAKING RAILROAD RIGHT OF WAY FOR STREET PURPOSES.—The case of the *City of Los Angeles v. Zeller*[1] presents proceedings on the part of the city of Los Angeles to condemn for street purposes ground used as a right of way by the Pacific Electric Railway Company, to which ground the Company held the fee simple title. The ground consisted of a strip of land sixteen hundred feet in length and about thirty-five feet in width. Upon it were located the rails, poles, wires and usual equipment of an electric railway. The strip was crossed by one street, and four streets abutted on it at right angles. Sixteenth Street formed a continuation of the strip at the east, and along this street the tracks of the railway company extended, leading toward the center of the City of Los Angeles. The object of the condemnation proceedings was to open Sixteenth Street westerly throughout this strip. The superior court found in favor of the city, condemning the parcel of land in question, and, while reserving to the company its right to operate its railroad therein, allowed the sum of $10. for the taking of the land, and the sum of $26,900 for damage to the property of the company not taken. In the District Court of Appeal the judgment of the Superior Court was affirmed.[2] Then, on an order of transfer to the Supreme Court, the judgment was reaffirmed, Mr. Justice Henshaw writing a brief dissenting opinion, in which Justices Melvin and Lorigan concurred.[3] Finally, on rehearing in the Supreme Court, the former judgment is reversed in an opinion written by Mr. Justice Melvin, Justices Shaw and Sloss dissenting.[4]

The decision in the District Court of Appeal and in the first hearing in the Supreme Court was based on the Court's application of a doctrine laid down by the Supreme Court of the

[1] (Sept. 21, 1917), 54 Cal. Dec. 359.
[2] City of Los Angeles v. Zeller (Oct. 14, 1915), 21 Cal. App. Dec. 470.
[3] City of Los Angeles v. Zeller (Jan. 26, 1917), 53 Cal. Dec. 151.
[4] Supra, n. 1.